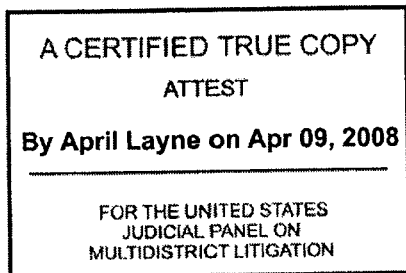


FILED

MAY 8, 2008

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURTUNITED STATES
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

Apr 09, 2008

FILED
CLERK'S OFFICE

2008 APR 29 AM 10:34

CLERK U.S. DISTRICT COURT
CENTRAL DIST. CALIF.

CORRECTED

BY NL
UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATIONFILED: APRIL 09, 2008
08CV2368 CEM
JUDGE COARIN RE: AQUA DOTS PRODUCTS
LIABILITY LITIGATIONKim A. Cosgrove -v- Spin Master Ltd., et al.
CV07-7544 MMM (PLAx)

TRANSFER ORDER

MDL No. 1940

TD

Before the entire Panel^{*}: Defendants Spin Master Ltd. and Spin Master, Inc., initially moved, pursuant to 28 U.S.C. § 1407, for coordinated or consolidated pretrial proceedings of this litigation in either the Northern District of Illinois or Eastern District of Arkansas. All responding parties agreed that centralization is appropriate and variously supported selection of either of these two districts or the Central District of California as transferee forum. At oral argument, movants and plaintiffs informed the Panel that all responding parties now agree that the Northern District of Illinois is the most appropriate transferee district for this litigation.

This litigation presently consists of seven actions listed on Schedule A and pending in six districts as follows: two actions in the Central District of California and one action each in the Eastern District of Arkansas, the Southern District of Florida, the Northern District of Illinois, the Western District of Missouri, and the Northern District of Texas.¹

On the basis of the papers filed and hearing session held, we find that the actions in this litigation involve common questions of fact, and that centralization under Section 1407 in the Northern District of Illinois will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. All actions share factual questions relating to the (1) design and manufacture of Aqua Dots, and/or (2) the adequacy of the November 2007 voluntary recall of this product. Centralization under

^{*} Judge Scirica took no part in the disposition of this matter. Another Panel member who could be a member of a putative class in this litigation has renounced his participation in this class and has participated in this Panel decision.

¹ The Panel has been notified that two other related actions have recently been filed, one action each in the Northern District of Illinois and the Western District of Kentucky. These actions will be treated as potential tag-along actions.

I hereby attest and certify that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIABy s/ WILLIE A. HAYNES
DEPUTY CLERK
DISTRICT COURT, NORTHERN
DISTRICT OF ILLINOIS
DATE: APRIL 28, 2008By [Signature] Deputy

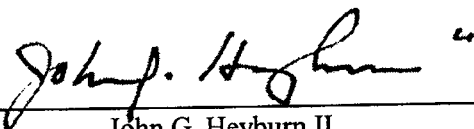
- 2 -

Section 1407 will eliminate duplicative discovery; avoid inconsistent pretrial rulings—especially on the issue of class certification; and conserve the resources of the parties, their counsel and the judiciary.

We further find that the Northern District of Illinois is an appropriate transferee district for this litigation, because (1) the Illinois district is relatively conveniently located in relation to documents and witnesses located at Spin Master Ltd.'s Canadian headquarters, and (2) all parties now agree upon centralization in this district.

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, the actions listed on Schedule A and pending outside the Northern District of Illinois are transferred to the Northern District of Illinois and, with the consent of that court, assigned to the Honorable David H. Coar for coordinated or consolidated pretrial proceedings with the action pending there and listed on Schedule A.

PANEL ON MULTIDISTRICT LITIGATION



John G. Heyburn II
Chairman

D. Lowell Jensen
Robert L. Miller, Jr.
David R. Hansen

J. Frederick Motz
Kathryn H. Vratil
Anthony J. Scirica

**IN RE: AQUA DOTS PRODUCTS LIABILITY
LITIGATION**

MDL No. 1940

SCHEDULE A

Eastern District of Arkansas - 08cv2367

Donald C. Erbach, Jr., et al. v. Spin Master, Ltd., et al., C.A. No. 4:07-1112

Central District of California - 08cv2368

Kim A. Cosgrove v. Spin Master, Ltd., et al., C.A. No. 2:07-7544
Sandra Irene Soderstedt v. Moose Enterprise Pty Ltd., et al., C.A. No. 2:07-7546

Southern District of Florida - 08cv2369

Simon Bertanowski, et al. v. Moose Enterprise Pty Ltd., et al., C.A. No. 1:07-22941

Northern District of Illinois

Robyn Williams v. Spin Master, Ltd., C.A. No. 1:07-6387

Western District of Missouri - 08cv2370

Michael J. Burgess v. Spin Master, Ltd., C.A. No. 3:07-5110

Northern District of Texas - 08cv2371

Eric K. Botsch v. Spin Master, Inc., et al., C.A. No. 3:07-1948

(PLAx), CLOSED, DISCOVERY, MANADR, STAYED

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
(Western Division - Los Angeles)
CIVIL DOCKET FOR CASE #: 2:07-cv-07544-MMM-PLA
Internal Use Only

Kim A Cosgrove v. Spin Master et al
Assigned to: Judge Margaret M. Morrow
Referred to: Magistrate Judge Paul L. Abrams
Related Case: 2:07-cv-07546-MMM-PLA
Cause: 28:1332 Diversity-Product Liability

Date Filed: 11/16/2007
Date Terminated: 02/15/2008
Jury Demand: Plaintiff
Nature of Suit: 365 Personal Inj. Prod.
Liability
Jurisdiction: Diversity

Plaintiff

Kim A Cosgrove

*on behalf herself and all those similarly
situated*

represented by **Donald R Hall**

Kaplan Fox and Kilsheimer
850 Third Avenue 14th Floor
New York, NY 10022
212-687-1980
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Elizabeth A Fegan

Hagens Berman Sobol Shapiro
820 North Blvd Suite B
Oak Park, IL 60301
708-776-5600
Email: beth@hbsslaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Frederic S Fox

Kaplan Fox & Kilsheimer
850 Third Avenue 14th Fl
New York, NY 10022
212-687-1980
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Laurence D King

Kaplan Fox & Kilsheimer
350 Sansome Street Suite 400
San Francisco, CA 94104
415-772-4700
Email: lking@kaplanfox.com
LEAD ATTORNEY

I declare under oath and certify on 5/1/08
that the foregoing document is a full, true
and correct copy of the original on file in
my office, or in my legal custody.

CLERK, U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

By [Signature] Deputy



ATTORNEY TO BE NOTICED

Linda M Fong
Kaplan Fox & Kilsheimer
350 Sansome Street Suite 400
San Francisco, CA 94104
415-772-4700
Email: lfong@kaplanfox.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lori S Brody
Kaplan Fox and Kilsheimer
1801 Century Park East Suite 1460
Los Angeles, CA 90067
310-785-0800
Email: lbrody@kaplanfox.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

**Spin Master
LTD**

represented by **Ina D Chang**
Shook Hardy and Bacon
333 Bush Street
Suite 600
San Francisco, CA 94104-2828
415-544-1900
Email: ichang@shb.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Tammy B Webb
Shook Hardy and Bacon
333 Bush Street
Suite 600
San Francisco, CA 94104-2828
415-544-1900
Email: tbwebb@shb.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

**Spin Master
Inc.**

represented by **Ina D Chang**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Tammy B Webb

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Moose Enterprises

represented by **Dana M Gilreath**
 Clinton & Clinton
 100 Oceangate 14th FL
 Long Beach, CA 90802
 (562) 216-5000
 Email: dgilreath@clinton-clinton.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
11/16/2007	<u>1</u>	COMPLAINT against Defendants Spin Master(Inc.), Moose Enterprises, Spin Master(LTD).(Filing fee \$ 350 PAID.) Jury Demanded., filed by plaintiff Kim A Cosgrove.(ghap) (Entered: 11/26/2007)
11/16/2007	<u>2</u>	20 DAY Summons Issued re Complaint - (Discovery)[1] as to Defendants Spin Master(Inc.), Moose Enterprises, Spin Master(LTD). (ghap) (Entered: 11/26/2007)
11/16/2007	<u>3</u>	CERTIFICATE of Interested Parties filed by Plaintiff Kim A Cosgrove. (ghap) (Entered: 11/26/2007)
11/16/2007	<u>4</u>	NOTICE TO PARTIES OF ADR PILOT PROGRAM filed.(ghap) (Entered: 11/26/2007)
11/16/2007	<u>5</u>	FAX number for Attorney Lori S Brody is 310-785-0897. (ghap) (Entered: 11/26/2007)
11/16/2007	<u>6</u>	FAX number for Attorneys Linda M Fong, Laurence D King is 415-772-4707. (ghap) (Entered: 11/26/2007)
11/16/2007	<u>7</u>	FAX number for Attorneys Frederic S Fox, Donald R Hall is 212-687-7714. (ghap) (Entered: 11/26/2007)
11/16/2007	<u>8</u>	FAX number for Attorney Elizabeth A Fegan is 708-776-5601. (ghap) (Entered: 11/26/2007)
01/07/2008	<u>9</u>	FIRST STIPULATION Extending Time to Answer the complaint as to Spin Master(Inc.) answer now due 2/6/2008; Spin Master(LTD) answer now due 2/6/2008, filed by Defendants Spin Master(Inc.); Spin Master (LTD).(Chang, Ina) (Entered: 01/07/2008)
01/07/2008	<u>10</u>	FIRST STIPULATION Extending Time to Answer the complaint as to filed by Defendant Spin Master(Inc.).(Chang, Ina) (Entered: 01/07/2008)
01/10/2008	<u>11</u>	PROOF OF SERVICE Executed Kim A Cosgrove, upon Spin Master (Inc.) served on 12/18/2007, answer due 2/6/2008. (Fong, Linda) (Entered: 01/10/2008)

01/23/2008	<u>7</u>	NOTICE of Motion Before the Judicial Panel on Multidistrict Litigation filed by Defendant Spin Master(Inc.), Spin Master(LTD). (Webb, Tammy) (Entered: 01/23/2008)
01/24/2008	<u>8</u>	PROOF OF SERVICE Executed by plaintiff Kim A Cosgrove, upon Moose Enterprises served on 1/11/2008, answer due 1/31/2008. Original Summons not returned. (Fong, Linda) (Entered: 01/24/2008)
01/30/2008	<u>9</u>	WAIVER OF SERVICE Returned Executed Kim A Cosgrove. upon Spin Master(LTD) waiver sent by Plaintiff on 1/22/2008, answer due 3/22/2008. Waiver of Service signed by Tammy Webb. (Fong, Linda) (Entered: 01/30/2008)
01/30/2008	<u>10</u>	EX PARTE APPLICATION for Extend Time to File Answer to 3/27/2008 filed by defendant Spin Master(Inc.), Spin Master(LTD). (Attachments: # <u>1</u> Declaration of Randall D. Haimovici in Support of Defendant Spin Master, Inc's Ex Parte Application to Extend the Time to Respond to Plaintiff Kim Cosgrove's Complaint and to Waive the 20 Day Meet and Confer Requirement Under Local Rule 7-3)(Webb, Tammy) (Entered: 01/30/2008)
01/30/2008	<u>11</u>	PROOF OF SERVICE filed by defendant Spin Master(Inc.), Spin Master (LTD), re EX PARTE APPLICATION for Extend Time to File Answer to 3/27/2008 <u>10</u> served on 01/30/2008. (Webb, Tammy) Modified on 1/30/2008 (ah,). (Entered: 01/30/2008)
01/31/2008	<u>12</u>	OPPOSITION to Defendant Spin Master Inc.'s ex parte Application to Extend the Time to Respond to Complaint and to Waive the 20 Day Meet and Confer Requirement Under Local Rule 7-3 for Filing a Motion to Stay filed by Plaintiff Kim A Cosgrove. (Attachments: # <u>1</u> Declaration of Laurence King in Support of Plaintiff's Opposition)(King, Laurence) (Entered: 01/31/2008)
01/31/2008	<u>13</u>	PROOF OF SERVICE filed by Plaintiff Kim A Cosgrove, re Response in Opposition to Motion, <u>12</u> served on January 31, 2008. (King, Laurence) (Entered: 01/31/2008)
01/31/2008	<u>14</u>	CORRECTED PROOF OF SERVICE filed by Plaintiff Kim A Cosgrove, re Response in Opposition to Motion, <u>12</u> served on January 31, 2008. (King, Laurence) (Entered: 01/31/2008)
01/31/2008	<u>1</u>	(Court only) ***MOTION RULING: by Judge Margaret M. Morrow : granting <u>10</u> Ex Parte Application for Extension of Time to Answer. (ah) (Entered: 02/01/2008)
02/01/2008	<u>15</u>	FIRST STIPULATION Extending Time to Answer the complaint as to Moose Enterprises answer now due 3/3/2008, filed by defendant Moose Enterprises.(Gilreath, Dana) (Entered: 02/01/2008)
02/01/2008	<u>16</u>	ORDER GRANTING EX PARTE APPLICATION <u>10</u> by Judge Margaret M. Morrow. The court grants defendants request to waive the 20-day requirement set forth in Local Rule 7-3. The court also grants defendants request for a further extension of their time to respond to the

		complaint. Defendants may have until April 1, 2008 to answer or otherwise respond to the complaint. (ah) Additional attachment(s) added on 2/1/2008 (ah,). (Entered: 02/01/2008)
02/01/2008	●	(Court only) Update Answer Due Deadline as to Moose Enterprises answer due 4/1/2008; Spin Master(LTD) answer due 4/1/2008. (ah) (Entered: 02/01/2008)
02/01/2008	● <u>17</u>	NOTICE OF MOTION AND MOTION to Stay Case pending Transfer Decision by the Judicial Panel on Multidistrict Litigation <i>by Moving Defendants Spint Master, Ltd. and Spin Master, Inc.</i> filed by Defendants Spin Master(LTD).Motion set for hearing on 2/25/2008 at 10:00 AM before Judge Margaret M. Morrow. (Attachments: # <u>1</u> Motion to Stay) (Chang, Ina) (Entered: 02/01/2008)
02/01/2008	● <u>18</u>	ORDER STRIKING MOTION TO STAY <u>17</u> by Judge Margaret M. Morrow : Motion hearing date is not available before Judge Morrow. (ah) (Entered: 02/01/2008)
02/01/2008	● <u>19</u>	NOTICE OF LODGING filed (Attachments: # <u>1</u> Exhibit A - [Proposed] Order Granting Defendants' Motion to Stay All Proceedings)(Chang, Ina) (Entered: 02/01/2008)
02/01/2008	● <u>20</u>	NOTICE OF MOTION AND MOTION to Stay Case pending Transfer Decision By The Judicial Panel on Multidistrict Litigation <i>by Defendants Spin Master, Ltd. and Spin Master, Inc.</i> filed by Defendants Spin Master (LTD).Motion set for hearing on 3/24/2008 at 10:00 AM before Judge Margaret M. Morrow. (Attachments: # <u>1</u> Motion to Stay All Proceedings# <u>2</u> Proposed Order)(Chang, Ina) (Entered: 02/01/2008)
02/01/2008	●	(Court only) ***MOTION RULING: by Judge Margaret M. Morrow : striking <u>17</u> Motion to Stay Case (ah) (Entered: 02/10/2008)
02/04/2008	● <u>21</u>	IN CHAMBERS ORDER ADANCING BRIEFING SCHEDULE by Judge Margaret M. Morrow : The briefing schedule on the motion to stay is advanced as follows: Opposition due by 2/17/08. Reply due by 2/24/08. (ah) (Entered: 02/04/2008)
02/04/2008	● <u>22</u>	ORDER ADVANCING BRIEFING SCHEDULE by Judge Margaret M. Morrow re MOTION to Stay Case pending Transfer Decision By The Judicial Panel on Multidistrict Litigation by Defendants Spin Master, Ltd. and Spin Master, Inc <u>20</u> . The court hereby advances the briefing schedule on defendants motion. Any opposition by plaintiff must be filed no later than February 15, 2008. Any reply by defendants must be filed no later than February 22, 2008. The court requests that the parties deliver a conformed courtesy copy to chambers in the Roybal Building on the day of filing. (rrey) (Entered: 02/05/2008)
02/08/2008	● <u>23</u>	Joint STIPULATION for Extension of Time to File Response to Complaint and Time to File Motion For Class Certification filed by Plaintiff Kim A Cosgrove. (Attachments: # <u>1</u> Proposed Order)(King, Laurence) (Entered: 02/08/2008)

02/08/2008	● <u>24</u>	PROOF OF SERVICE filed by Plaintiff Kim A Cosgrove, <i>Re Joint Stipulation Extending Time to Respond to Complaint and Time to File Motion For Class Certification; [Proposed] Order</i> served on 2/8/08. (King, Laurence) (Entered: 02/08/2008)
02/08/2008	● <u>25</u>	Joint STIPULATION for Extension of Time to File Response to Complaint and Time to File Motion For Class Certification filed by Plaintiff Kim A Cosgrove. (Attachments: # <u>1</u> Proposed Order)(Fong, Linda) (Entered: 02/08/2008)
02/08/2008	● <u>26</u>	PROOF OF SERVICE filed by Plaintiff Kim A Cosgrove, <i>Re Joint Stipulation Extending Time to Respond to Complaint and Time to File Motion For Class Certification; [Proposed] Order</i> served on 2/8/08. (Fong, Linda) (Entered: 02/08/2008)
02/08/2008	● <u>27</u>	ORDER STRIKING JOINT SIPULATION AND POS 23 24 by Judge Margaret M. Morrow : Duplicate filings. See 25 and 26. (ah) (Entered: 02/10/2008)
02/12/2008	● <u>28</u>	MINUTES OF IN CHAMBERS ORDER held before Judge Margaret M. Morrow : re: Striking Electronically Filed Documents (G-106) <u>27</u> . Due to clerical error, the court issued an order striking the joint stipulation <u>23</u> and proof ofservice <u>24</u> as duplicate filings. After further review, the Court concludes that those documents should have not been stricken. The Court hereby strikes its previous order striking the two documents. Related to Order <u>27</u> . (rrey) (Entered: 02/12/2008)
02/14/2008	● <u>29</u>	RESPONSE IN SUPPORT of MOTION to Stay Case pending Transfer Decision by the Judicial Panel on Multidistrict Litigation <i>by Moving Defendants Spint Master, Ltd. and Spin Master, Inc.</i> <u>17</u> filed by Defendant Moose Enterprises. (Gilreath, Dana) (Entered: 02/14/2008)
02/15/2008	● <u>30</u>	ORDER STAYING CASE by Judge Margaret M. Morrow. Defendants Spin Master, Inc.s and Spin Master, Ltd.stime to respond, move, or otherwise plead is extended until 45days after the JPML grants, denies, or otherwise disposes of thetwo pending motions to transfer. If a consolidated complaint isfiled by all plaintiffs in a single transferee court, Spin Master,Inc.s and Spin Master, Ltd.s time to answer, move, or otherwiseplead is extended until 45 days after service of the consolidated complaint. (ah) (Entered: 02/19/2008)
02/15/2008	● <u>31</u>	ORDER STAYING CASE by Judge Margaret M. Morrow. Defendant Moose Enterprises Pty Ltd.s time to respond,move, or otherwise plead is extended until 45 days after the JPMLgrants, denies, or otherwise disposes of the two pending motionsto transfer. If a consolidated complaint is filed by allplaintiffs in a single transferee court, Moose Enterprises PtyLtd.s time to answer, move, or otherwise plead is extended until45 days after service of the consolidated complaint. (ah) (Entered: 02/19/2008)
02/19/2008	● <u>32</u>	REQUEST to Withdraw MOTION to Stay Case pending Transfer Decision By The Judicial Panel on Multidistrict Litigation <i>by Defendants Spin Master, Ltd. and Spin Master, Inc.</i> <u>20</u> filed by Defendants Spin

		Master(Inc.). (Chang, Ina) (Entered: 02/19/2008)
02/19/2008	● <u>33</u>	ORDER GRANTING REQUEST TO WITHDRAW MOTION TO STAY by Judge Margaret M. Morrow. (ah) (Entered: 02/20/2008)
02/19/2008	●	(Court only) ***MOTION RULING: by Judge Margaret M. Morrow : Withdrawing <u>32</u> Request to Withdraw. (ah) (Entered: 02/20/2008)
03/12/2008	● <u>34</u>	STIPULATION AND ORDER EXTENDING TIME TO RESPOND TO COMPLAINT AND TIME TO FILE MOTION FOR CLASS CERTIFICATION by Judge Margaret M. Morrow : Response and motion for class certification due 45 days after the JPML grants, denies, or otherwise disposes of the two pending motions to transfer. See Order (ah) (Entered: 03/12/2008)
04/11/2008	● <u>35</u>	NOTICE of Issuance of Transfer Order by Judicial Panel on Multidistrict Litigation filed by Defendant Spin Master(LTD). and <i>Spin Master, Inc.</i> (Attachments: # <u>1</u> Exhibit A - Transfer Order)(Chang, Ina) (Entered: 04/11/2008)
04/29/2008	● <u>36</u>	TRANSFER ORDER: IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C.1407, the actions listed on schedule A and pending outside the Northern District Illinois are transferred to the Northern District of Illinois and, with the consent of that court, assigned to the Honorable David H. Coar for coordinated or consolidated pretrial proceedings with the action pending there and listed on Schedule A. (bp) (Entered: 05/01/2008)
05/01/2008	● <u>37</u>	TRANSMITTAL of documents: Emailed complaint, certified copies of docket sheet and transfer order to the USDC Northern District of Illinois. (bp) (Entered: 05/01/2008)



SHERRI R. CARTER
District Court Executive and
Clerk of Court

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**
312 North Spring Street, Room G-8
Los Angeles, CA 90012
Tel: (213) 894-3535

SOUTHERN DIVISION
411 West Fourth Street, Suite 1053
Santa Ana, CA 92701-4516
(714) 338-4750

EASTERN DIVISION
3470 Twelfth Street, Room 134
Riverside, CA 92501
(951) 328-4450

May 1, 2008

Name & Address

Everett McKinley Dirksen
United States Courthouse
20th Floor
219 South Dearborn Street
Chicago, IL 606004

Re: MDL 1940 In Re: Aqua Dots Products Liability Litigation

Transfer of our Civil Case No. CV07-7544-MMM(PLAx) 08C 2368

Case Title: Kim A. Cosgrove-v- Spin Master, Ltd., et al,

Dear Sir/Madam:

An order having been made by the Judicial Panel on Multi-district Litigation transferring/ remanding the above-numbered case to your district, we are transmitting herewith our entire original file in the action, together with a copy of the order and a certified copy of the docket. Please acknowledge receipt of same and indicate below the case number you have assigned to this matter on the enclosed copy of this letter and return it to our office. Thank you for your cooperation.

Very truly yours,

Clerk, U.S. District Court

By Brent Pacillas
Deputy Clerk

cc: All counsel of record
Clerk, MDL Panel

TO BE COMPLETED BY RECEIVING DISTRICT

Receipt is acknowledged of the documents described herein and, if not already assigned, we have assigned this matter the following case number: _____.

Clerk, U.S. District Court

By _____
Deputy Clerk

FILED ORIGINAL

1 Lori S. Brody (SBN 150545)
 2 lbrody@kaplanfox.com
 3 KAPLAN FOX & KILSHEIMER LLP
 4 1801 Century Park East
 5 Suite 1460
 6 Los Angeles, CA 90067
 7 Telephone: 310-785-0800
 8 Facsimile: 310-785-0897

2007 NOV 16 PM 4:04

RECEIVED DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

9 Laurence D. King (SBN 206423)
 10 lking@kaplanfox.com
 11 Linda M. Fong (SBN 124232)
 12 lfong@kaplanfox.com
 13 KAPLAN FOX & KILSHEIMER LLP
 14 350 Sansome Street, Suite 400
 15 San Francisco, CA 94104
 16 Telephone: 415-772-4700
 17 Facsimile: 415-772-4707

18 Frederic S. Fox
 19 ffox@kaplanfox.com
 20 Donald R. Hall
 21 dhall@kaplanfox.com
 22 KAPLAN FOX & KILSHEIMER LLP
 23 850 Third Avenue, 14th Floor
 24 New York, NY 10022
 25 Telephone: 212-687-1980
 26 Facsimile: 212-687-7714

Elizabeth A. Fegan
beth@hbsslaw.com
 HAGENS BERMAN SOBOL SHAPIRO LLP
 820 North Blvd, Suite B
 Oak Park, IL 60301
 Telephone: 708-776-5600
 Facsimile: 708-776-5601

27 Additional attorneys on
 28 signature page

UNITED STATES DISTRICT COURT

FAXED

CENTRAL DISTRICT OF CALIFORNIA

19 KIM A. COSGROVE, on behalf
 20 herself and all those similarly
 21 situated,

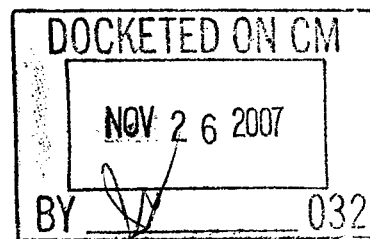
Plaintiff,

v.

23 SPIN MASTER, LTD., SPIN MASTER,
 24 INC. and MOOSE ENTERPRISES,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT AND
DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

IS
20

1 Plaintiff Kim A. Cosgrove, by her attorneys, alleges upon
2 personal knowledge as to herself and upon information and belief
3 as to the other allegations of this Complaint, as follows:

4 **SUMMARY OF THE ACTION**

5 1. This is a nationwide class action brought by plaintiff
6 on behalf of herself and her minor child, and all other
7 individuals similarly situated in the United States who,
8 purchased, paid for or received as a gift, various young
9 children's Aqua Dots craft kits. Aqua Dots are arts and craft
10 beads covered with 1,4 butanediol, an industrial solvent that,
11 when ingested, metabolizes into gamma hydroxy butyrate ("GHB"),
12 commonly known as the "date rape" drug. Children who swallow the
13 beads can become comatose, develop respiratory depression, have
14 seizures or even die. These toxic toys were aimed at children as
15 young as four years of age.

16 2. The Aqua Dots were researched, designed, developed,
17 manufactured, produced, marketed, distributed and/or sold by
18 defendants Spin Master Ltd., Spin Master, Inc. and Moose
19 Enterprises (hereafter referred to as "defendants").

20 3. The U.S. Consumer Product Safety Commission (the
21 "Commission") is charged with protecting the public from
22 unreasonable risks of serious injury or death from more than
23 15,000 types of consumer products under its jurisdiction. On
24 November 7, 2007, after reports that children who ingested the
25 Aqua Dots beads became dangerously ill, Spin Master, Ltd., in
26 cooperation with the Commission, recalled all Aqua Dots products
27 (the "Recall"). Acknowledging the unreasonable risks to children,
28 defendants instructed parents and consumers to take the toxic toys

1 away from children immediately.

2 4. As part of the recall notice, the Commission reported
3 two known incidences involving children who became seriously ill
4 and fell into comas after swallowing Aqua Dots. One of those
5 children, a 20-month-old boy, swallowed several dozen beads and
6 became dizzy and vomited several times before slipping into a
7 comatose state. Since then, he reportedly has fully recovered. The
8 other child, a 4-year-old, vomited and slipped into a comatose
9 state and was hospitalized for five days before apparently
10 recovering fully.

11 5. Defendants marketed and advertised the recalled Aqua
12 Dots throughout the United States and in the state of California
13 as being safe for children. The recalled Aqua Dots were sold in
14 toy stores, department stores, specialty shops and on internet
15 sites throughout the nation and the state of California.

16 6. Pursuant to the Federal Hazardous Substances Act
17 ("FHSA"), 15 U.S.C. §1261 et seq., any toy intended for use by
18 children which contains a hazardous substance in such manner as to
19 be susceptible of access by children are banned under 15 U.S.C.
20 §1261(q). A product which is toxic is defined by the FHSA as a
21 hazardous substance. 15 U.S. C. § 1271(f)(1)

22 7. Defendants knew, or should have known, that the recalled
23 Aqua Dots were defective and presented a serious risk to the
24 health and safety of children. On its Questions & Answers web
25 page, Spin Master represents that it voluntarily subjects all its
26 toys to extensive third party certified product testing. It
27 states that this testing ensures that the toys comply with the
28 highest international safety and quality standards. In public

1 releases regarding the Recall and posted on its website, Spin
2 Master states:

3 Spin Master's decision to pursue this recall
4 is grounded in our ongoing commitment to
5 children's safety.

6 ***

7 Spin Master has always been a trusted company
8 and distributor of children's products and we
9 have made safety of children our foremost
10 priority.

11 8. Notwithstanding their reassurances that their children's
12 toys were of the highest safety and quality, defendants failed to
13 adequately design, screen and test the Aqua Dots toys, ignoring
14 the serious health threats that the recalled Aqua Dots presented
15 to children.

16 9. Although defendants' recall of the Aqua Dots "is
17 grounded in their ongoing commitment to children's safety," and
18 the recalled products are extremely dangerous to children,
19 defendants have not offered to reimburse plaintiff and members of
20 the class for the costs of the recalled Aqua Dots products, which
21 range in price from \$17 to as much as \$30. Defendants also have
22 not offered to pay for any health-related problems associated with
23 the ingestion of the Aqua Dots. Instead, defendants only offer to
24 replace the toxic beads with other beads or another toy.
25 Defendants' offer fails to compensate plaintiff and the class for
26 their damages or make them whole.

27 10. Plaintiff and members of the class purchased and/or
28 received as gifts the recalled Aqua Dots. Plaintiff and members

1 of the class gave these toys to their young children to play with,
2 reasonably believing that they were safe. If plaintiff and
3 members of the class had known the true nature of the recalled
4 Aqua Dots they would not have purchased them and/or accepted them
5 as gifts, nor allowed their children to play with the dangerous
6 recalled Aqua Dots.

7 11. Defendants recalled all Aqua Dots, available in various
8 different products. Upon information and belief, the recalled
9 products include: Aqua Dots Super Studio, Aqua Dots Starter, Aqua
10 Dots Refill, Aqua Dots Crystal Beads, Aqua Dots Glow in the Dark
11 Beads, Aqua Dots Pony, Aqua Dots Fairy, Aqua Dots Mermaid, Aqua
12 Dots Dinosaur, Aqua Dots Pets, Aqua Dots Rescue, Aqua Dots Tray
13 and Spray, Aqua Dots Blue Horizontal, Aqua Dots Red Diagonal, Aqua
14 Dots Build up Pak/Activity Pack, Aqua Dots Portable Pack, Aqua
15 Dots Portable Pet Pack, Aqua Dots TV Offer, Aqua Dots Starter Pen
16 Pack, Aqua Dots Refill Pack, Aqua Dots Super Studio Double the
17 Dots and Aqua Dots Storage Unit with 600 Beads.

18 12. On November 7, 2007, the Commission estimated
19 approximately 4.2 million units are the subject of the recall.

20 13. The recalled Aqua Dots were manufactured in Shenzhen,
21 China, where they were purposefully manufactured with a coating
22 containing a toxic chemical which can cause significant health
23 risks to children if ingested, or even death.

24 14. This action seeks monetary damages, including but not
25 limited to, a full refund of all costs associated with the
26 purchase of the recalled Aqua Dots. Plaintiff also seeks
27 emergency notice to the Class so that Class members will be
28 apprised of the potentially life-threatening dangers which have

1 been associated with the recalled Aqua Dots.

2
3 **JURISDICTION AND VENUE**

4 15. The Court has subject matter jurisdiction pursuant to 28
5 U.S.C. § 1332(d) because this action is between citizens of
6 different states, a class action has been pled, and the matter in
7 controversy exceeds the sum or value of \$5,000,000 exclusive of
8 interest and costs.

9 16. Venue is proper in this District under 28 U.S.C. §§
10 1391(a), (b), and (c), 28 U.S.C. § 1407 and 15 U.S.C. 22.

11 Defendants do substantial business in the State of California and
12 within this Federal Judicial District, advertise in this District,
13 received substantial compensation and profits from the sales of
14 the recalled Aqua Dots in this District, and have made material
15 omissions and misrepresentations and breaches of warranties in
16 this District so as to subject it to in personam jurisdiction in
17 this District.

18 **PARTIES**

19 17. Plaintiff Kim A. Cosgrove is a resident of Massapequa,
20 New York. Plaintiff's child received as a gift the Aqua Dots
21 Starter set and "Glow in the Dark" refill beads. She also
22 purchased from Target additional refill beads including the
23 "Dinosaur" and "Rescue" accessories.

24 18. Defendant Spin Master™ Ltd., a self-described multi-
25 category children's entertainment company, has been designing,
26 developing, manufacturing and marketing consumer products for
27 children around the world since 1994. Spin Master™ Ltd. says it
28 is ranked among the top 10 North American toy manufacturers and is

1 a dominant leader in the children's entertainment industry.
2 Spin Master Ltd. maintains its global headquarters in Toronto,
3 Canada, and also has offices in Los Angeles, New York and
4 elsewhere throughout the world.

5 19. Defendant Spin Master, Inc. a Delaware corporation, is
6 headquartered at 11858 La Grande Avenue, West Los Angeles,
7 California. Spin Master Inc. distributes Aqua Dots toys
8 throughout the United States and Canada.

9 20. Defendant Moose Enterprises, a self-described "pro-
10 active, fast-moving, dynamic organization" and "a major player on
11 the global front," is headquartered in Melbourne, Australia, with
12 offices in New York and Hong Kong.

13 CLASS ACTION ALLEGATIONS

14 21. Plaintiff brings this action as a nationwide class
15 action for monetary damages, equitable, injunctive and declaratory
16 relief pursuant to Federal Rule of Civil Procedure 23(b)(1),
17 23(b)(2) and 23(b)(3) on behalf of a Class consisting of all
18 persons who purchased and/or paid for and/or received as a gift
19 various recalled Aqua Dots. Excluded from the Class are
20 defendants, and any person, firm, trust, corporation, or other
21 entity related to or affiliated with defendants, including,
22 without limitation, persons who are employees, officers or
23 directors of defendants.

24 22. Plaintiff is a member of the Class she seeks to
25 represent. The members of the Class are so numerous that joinder
26 of all members is impracticable.

27 23. The issues in the action are common to all members of
28 the Class. Each purchased and/or received as a gift one or more

1 recalled Aqua Dots and has been affected in the same manner by
2 defendants' practice of researching, designing, developing,
3 manufacturing, producing, marketing, distributing and/or selling
4 products for children which contain a toxic coating.

5 24. There are questions of law and fact common to the Class
6 including, but not limited to:

7 a. Whether defendants are strictly liable for the
8 design, manufacture and/or marketing of dangerously defective
9 products;

10 b. Whether defendants negligently designed,
11 manufactured, labeled and/or marketed the relevant products;

12 c. Whether children who have sucked on, swallowed
13 and/or otherwise been exposed to the recalled Aqua Dots containing
14 a toxic chemical suffered adverse health effects, reactions or
15 diseases caused by exposure to and/or handling of those products;

16 d. Whether the Class members' children's increased
17 risk of sustaining adverse health effects or other injury makes
18 periodic diagnostic and medical examinations (medical monitoring)
19 effective and reasonably necessary;

20 e. Whether defendants conducted, either directly or
21 indirectly, appropriate research and testing of the relevant
22 products to determine whether the toxic chemical was contained in
23 the recalled Aqua Dots;

24 f. Whether defendants breached express and/or implied
25 warranties covering the recalled Aqua Dots;

26 g. Whether defendants were unjustly enriched at the
27 expense of plaintiff and the Class;

28 h. Whether the equitable, injunctive and declaratory

1 relief requested herein should be granted;

2 i. Whether defendants' acts, practices,
3 misrepresentations and omissions described herein, and
4 defendants' dissemination of deceptive and misleading advertising
5 and marketing materials in connection therewith, constituted
6 unfair, unlawful and/or fraudulent business acts and practices
7 within the meaning of California Business and Professions Code
8 sections 17200 *et seq.* and 17500 *et seq.* and similar consumer
9 fraud laws of other states; and

10 j. Whether the Class has been injured by virtue of
11 defendants' violations of California Business & Professions Code
12 sections 17200, *et seq.* and 17500 *et seq.*

13 25. The claims of the named plaintiff are typical of the
14 claims of the Class in that the named plaintiff and the members of
15 the Class purchased and/or paid for and/or received as a gift one
16 or more of the relevant products which were researched, designed,
17 developed, manufactured, produced, marketed, distributed, sold
18 and/or placed in the stream of interstate commerce by defendants,
19 and as a result their children now suffer an increased risk of
20 harm for which medical monitoring relief is appropriate.

21 26. Plaintiff will fairly and adequately represent and
22 protect the interests of the members of the Class they seek to
23 represent. Plaintiff has retained counsel competent and
24 experienced in complex class actions and products liability
25 litigation. Plaintiff's interests are coincident with, and not
26 antagonistic to, those of the Class members.

27 27. Notice can be provided to Class members by a combination
28 of published notice and first class mail using techniques and

1 forms of notice similar to those customarily used in product
2 liability, personal injury and fraud class actions.

3 28. Plaintiff seeks monetary damages (and restitution under
4 California's Unfair Competition Law), including but not limited to
5 the cost of purchasing the relevant products.

6 29. Plaintiff also seeks emergency notice to more adequately
7 advise Class members and their children of adverse reactions and
8 health risks posed by exposure to the relevant products.

9 30. Class certification is appropriate under Fed. R. Civ. P.
10 Rule 23(b)(1) because, inter alia, the prosecution of separate
11 actions by individual members of the Class would create a risk of
12 incompatible standards of conduct for defendants and inconsistent
13 or varying adjudications for all parties.

14 31. Class certification is also appropriate pursuant to Fed.
15 R. Civ. P. Rule 23(b)(2) because defendants have acted, or refused
16 to act, on grounds generally applicable to the Class, making
17 appropriate preliminary and final injunctive and declaratory
18 relief consisting of medical monitoring and emergency notice with
19 respect to plaintiff and the Class members.

20 **FIRST CLAIM FOR RELIEF**

21 **STRICT PRODUCTS LIABILITY**

22 32. Plaintiff incorporates by reference all other paragraphs
23 of this complaint as if fully set forth here and further alleges
24 as follows:

25 33. At all relevant times, defendants were producers,
26 manufacturers and/or distributors of the recalled Aqua Dots.

27 34. The recalled Aqua Dots produced, manufactured and/or
28 distributed by defendants were defective in design or formulation

1 in that, when the recalled Aqua Dots left the hands of the
2 defendants, the foreseeable risks exceeded the benefits associated
3 with the design or formulation.

4 35. Defendants' products were expected to and did reach
5 plaintiff and members of the Class without substantial change in
6 condition.

7 36. Alternatively, the recalled Aqua Dots manufactured
8 and/or supplied by defendants were defective in design or
9 formulation, in that, when they left the hands of the defendants,
10 they were unreasonably dangerous and more dangerous than an
11 ordinary consumer would expect.

12 37. The recalled Aqua Dots produced, manufactured and/or
13 distributed by defendants were defective due to inadequate warning
14 and/or inadequate testing and study, and inadequate reporting
15 regarding the results of same.

16 38. The recalled Aqua Dots produced, manufactured and/or
17 distributed by Defendants were defective due to inadequate post-
18 marketing warning or instruction, because, after defendants knew
19 or should have known of the risk of injury from the recalled Aqua
20 Dots, defendants failed to immediately provide adequate warnings
21 to plaintiff and the public.

22 **SECOND CLAIM FOR RELIEF**

23 **NEGLIGENCE**

24 39. Plaintiff incorporates by reference all other paragraphs
25 of this complaint as if fully set forth here and further alleges
26 as follows:

27 40. Defendants had a duty to exercise reasonable care in the
28 design, manufacture, marketing, sale and/or distribution of the

1 recalled Aqua Dots into the stream of commerce, including a duty
2 to assure that (1) the toys containing a toxic chemical did not
3 expose children to adverse health effects including without
4 limitation comas, respiratory depression, seizures and even death.

5 41. Defendants failed to exercise ordinary care in the
6 design, manufacture, marketing, sale, testing, quality assurance,
7 quality control, and/or distribution of the recalled Aqua Dots
8 into interstate commerce in that defendants knew or should have
9 known that the recalled Aqua Dots created a high risk of adverse
10 health effects which can cause extraordinary suffering and even
11 death. Defendants' failure to exercise reasonable care in the
12 design, manufacture, marketing, sale and/or distribution of the
13 recalled Aqua Dots was malicious, fraudulent and/or oppressive.

14 42. Specifically, Defendants were grossly negligent in the
15 design, manufacture, testing, advertising, warning, marketing
16 and/or sale of the recalled Aqua Dots in that they:

17 a) Failed to use due care in designing and
18 manufacturing the relevant products so as to avoid the
19 aforementioned risks to children;

20 b) Failed to accompany their products with proper
21 warnings regarding all possible adverse effects associated with
22 young children's handling and mouthing of, and otherwise being
23 exposed to, the relevant products;

24 c) Failed to conduct adequate testing and post-
25 marketing surveillance to determine the safety of the relevant
26 products;

27 d) Failed to warn plaintiff and members of the Class
28 prior to actively encouraging the sale of the recalled Aqua Dots

1 either directly or indirectly, orally or in writing, about the
2 following: (1) the possibility that children handling or
3 otherwise exposed to the recalled Aqua Dots could suffer adverse
4 health effects as described herein, and/or (2) the possibility of
5 affected children requiring hospitalization and/or continuous
6 medial monitoring as a result of exposure to the recalled Aqua
7 Dots; and

8 e) Were otherwise malicious, fraudulent and
9 oppressive.

10 43. Despite the fact that defendants knew or should have
11 known that the recalled Aqua Dots could cause unreasonable,
12 adverse health effects to children, defendants continued to market
13 the relevant products to consumers including plaintiff despite the
14 possibility that these products could be produced without a
15 coating containing a toxic chemical.

16 44. Defendants knew or should have known that consumers such
17 as plaintiff and the Class would foreseeably suffer adverse health
18 effects and injury as a result of defendants' failure to exercise
19 ordinary care as described above.

20 45. Defendants' negligence was a proximate cause of
21 plaintiff's child and the Class's children's increased risk of
22 harm as previously set forth herein. Defendants' misconduct
23 offends public policy and is malicious, fraudulent and/or
24 oppressive and caused substantial injury to consumers and their
25 children.

26 **THIRD CLAIM FOR RELIEF**

27 **BREACH OF IMPLIED WARRANTY**

28 46. Plaintiff incorporates by reference all other paragraphs

1 of this complaint as if fully set forth here and further alleges
2 as follows:

3 47. Defendants designed, developed, manufactured, produced,
4 marketed, distributed and/or sold the recalled Aqua Dots.

5 48. At the time defendants designed, developed,
6 manufactured, produced, marketed, distributed and/or sold the
7 recalled Aqua Dots, defendants knew the purpose for which the
8 recalled Aqua Dots were intended and impliedly warranted that the
9 recalled Aqua Dots were of merchantable quality and safe and fit
10 for such use by young children.

11 49. Plaintiff reasonably relied upon the skill, superior
12 knowledge and judgment of defendants as to whether the recalled
13 Aqua Dots were of merchantable quality and safe and fit for their
14 intended use.

15 50. Due to defendants' wrongful conduct as alleged herein,
16 plaintiff could not have known about the risks associated with the
17 recalled Aqua Dots until after defendants issued the Recall
18 notice.

19 51. Because the Aqua Dots beads are defective and inherently
20 dangerous, as result of their toxic coating, which when mixed with
21 water, converts to GHB, the recalled Aqua Dots were not of
22 merchantable quality and were not safe or fit for their intended
23 use.

24 52. By virtue of the recall on or about November 7, 2007,
25 defendants were put on notice of the defect in the Aqua Dots
26 beads. Defendants were also put on notice of the defect in the
27 product by the numerous inquiries that they received concerning
28 the defect, and by the filing of various lawsuits.

1 53. As a direct and proximate result of the defendants'
2 breach of implied warranty, plaintiff and members of the Class
3 suffered damages as alleged herein.

4 **FOURTH CLAIM FOR RELIEF**

5 **UNLAWFUL, UNFAIR AND FRAUDULENT BUSINESS ACTS AND**
6 **PRACTICES IN VIOLATION OF CALIFORNIA BUS. & PROF. CODE §§17200,**
7 **ET SEQ., 17500 ET SEQ. AND CONSUMER FRAUD LAWS OF OTHER STATES**
8 **AGAINST ALL DEFENDANTS**

9 54. Plaintiff incorporates by reference all other paragraphs
10 of this complaint as if fully set forth here and further alleges
11 as follows:

12 55. Plaintiff brings this cause of action individually, on
13 behalf of members of the Class, and on behalf of the general
14 public.

15 56. The acts, practices, misrepresentations and omissions by
16 defendants described above, and defendants' dissemination of
17 deceptive and misleading advertising and marketing materials in
18 connection therewith, constituted unfair, unlawful and/or
19 fraudulent business acts and practices within the meaning of
20 California Business and Professions Code sections 17200 *et seq.*
21 and 17500 *et seq.* and similar consumer fraud laws of other states.
22 Defendants' conduct regarding the toxic chemical coated toys,
23 among other things, constitutes violations of the provisions of 15
24 U.S.C. §1261 *et seq.*

25 57. California Business and Professions Code section 17500
26 prohibits various deceptive practices in connection with the
27 dissemination in any manner of representations for the purpose of
28 inducing, or which are likely to induce, directly or indirectly,

1 customers to purchase products such as the products here at issue.

2 58. Defendants' acts, practices, misrepresentations and
3 omissions alleged herein, including but not limited to
4 misrepresentations concerning the safety and quality of the
5 recalled Aqua Dots, were intended to, and did, induce the
6 consuming public to purchase the recalled Aqua Dots and violated
7 and continues to violate California Business and Professions Code
8 sections 17200 *et seq.* and 17500 *et seq.*, and other similar
9 consumer fraud laws of other states, in that defendants caused
10 advertisements for the recalled Aqua Dots to be placed before the
11 general public without advising plaintiff and members of the Class
12 that the recalled Aqua Dots contained a toxic chemical which could
13 cause adverse health effects to young children exposed to that
14 toxic substance. Defendants' misconduct offends public policy and
15 is immoral, unethical, oppressive, and/or unscrupulous and caused
16 substantial injury to consumers and their children.

17 59. Pursuant to California Business and Professions Code
18 section 17203, plaintiff, on behalf of herself and her child, the
19 other Class members and their children, and the general public,
20 seek restitution of any monies wrongfully acquired or retained by
21 defendants and by means of their unfair practices, seek monetary
22 and punitive damages under the other states' consumer laws where
23 permitted, and such other and further relief as set forth in
24 Business & Professions Code sections 17200 *et seq.* and 17500 *et*
25 *seq.* and similar consumer fraud laws of other states.

FIFTH CLAIM FOR RELIEF

UNLAWFUL PRACTICE IN THE SALE OF CONSUMER GOODS IN VIOLATION OF
CALIFORNIA CONSUMERS LEGAL REMEDIES ACT, CIVIL CODE §1750, ET SEQ.

AND OTHER SIMILAR CONSUMER LAWS OF OTHER STATES AGAINST ALL

DEFENDANTS

60. Plaintiff incorporates by reference all other paragraphs
of this complaint as if fully set forth here and further alleges
as follows:

61. Plaintiff and other consumers similarly situated
purchased the recalled Aqua Dots described above primarily for
personal, family or household purposes.

62. Prior to plaintiff's purchase and/or receipt of the
recalled Aqua Dots, defendants violated California Civil Code
section 1770 and similar consumer laws of other states in the
following respects:

(a) In violation of California Civil Code section
1770(a)(5), defendants represented that the recalled Aqua Dots had
characteristics which they did not have. They represented that
the products were safe and healthful for children and had the
level of quality which would protect consumers' children from
unforeseen harm;

(b) In violation of California Civil Code section
1770(a)(7), defendants represented that the recalled Aqua Dots
were of a particular standard, quality or grade, namely, that they
were safe and healthful for children and had the level of quality
which would protect consumers' children from unforeseen harm; and

(c) In violation of California Civil Code section
1770(a)(9), defendants advertised the recalled Aqua Dots with the

1 intent not to sell them as advertised. Defendants advertised the
2 products as safe and healthful for children and of a quality which
3 would protect consumers' children from unforeseen harm when in
4 fact, the recalled Aqua Dots contained a toxic chemical which
5 could cause adverse health effects to young children exposed to
6 that toxic substance.

7 63. Plaintiff, and each of the members of the proposed class
8 she seeks to represent, suffered damages as a direct result of
9 defendants' conduct in the form of the purchase price paid for the
10 recalled Aqua Dots. Defendants were not entitled to the monies
11 paid for the recalled Aqua Dots because the recalled Aqua Dots
12 contained a toxic chemical which could cause adverse health
13 effects to young children exposed to that toxic substance.

14 64. Plaintiff is informed, and believes, and thereon alleges
15 that the above-mentioned misrepresentations resulted in the sale
16 of products to plaintiff and to other consumers similarly situated
17 which were dangerous to the plaintiff's child and the children of
18 other members of the proposed Class.

19 65. Defendants engaged in the above-alleged intentional
20 conduct because they felt confident in their greater position of
21 wealth, sophistication and power and in their ability to take
22 advantage of consumers with limited ability to seek and obtain
23 remedies for defendants' wrongful conduct. Defendants
24 deliberately, willfully and maliciously pursued this course of
25 conduct because they were motivated by the prospect of gaining
26 profits at the expense of the plaintiff and other members of the
27 proposed class and had no concerns that purchasers of the recalled
28 Aqua Dots would be able to effectively assert their legal rights

1 and hold defendants accountable for their intentional, unlawful,
2 unfair and fraudulent acts. Defendants thus acted with oppression
3 and malice in that they engaged in conduct intended to cause
4 unjust hardship to plaintiff and members of the proposed class and
5 have carried out such conduct with a willful and conscious
6 disregard of their rights. Accordingly, pursuant to Code of Civil
7 Procedure section 1780(a)(1)(4) and similar consumer laws of other
8 states, plaintiff seeks and is entitled to awards of compensatory
9 and punitive damages according to proof at the time of trial.

10 66. Pursuant to California Civil Code section 1780 and 1781,
11 and similar consumer laws of other states, plaintiff, on behalf of
12 herself, the other Class members, and the general public, requests
13 certification of the class, declaratory and injunctive relief, and
14 attorneys' fees, costs and expenses.

15 **SIXTH CLAIM FOR RELIEF**

16 **BREACH OF EXPRESS WARRANTY**

17 67. Plaintiff incorporates by reference all other paragraphs
18 of this complaint as if fully set forth here and further alleges
19 as follows:

20 68. Defendants expressly warranted that the recalled Aqua
21 Dots were designed, manufactured and marketed to meet or exceed
22 all applicable safety standards from around the world. Defendants
23 further expressly warranted that they subject all of their toys to
24 extensive third party certified product testing which ensures that
25 their toys comply with the highest international safety and
26 quality standards.

27 69. The recalled Aqua Dots did not conform to these express
28 representations because the products are not safe for handling by

1 young children and can cause adverse health effects, including
2 death.

3 70. As a direct and proximate result of the breach of said
4 warranties, and as the direct and legal result of the defective
5 condition of the recalled Aqua Dots as designed, manufactured,
6 packaged, labeled and supplied by defendants, and other wrongdoing
7 of defendants described herein, plaintiff and her child and
8 members of the Class and their children were caused to suffer
9 damages.

10 WHEREFORE, PLAINTIFF PRAYS FOR RELIEF AS FOLLOWS:

11 1. That this action be certified as a class action on
12 behalf of the proposed Class of all persons who purchased and/or
13 paid for and/or received as a gift one or more recalled Aqua Dots,
14 that the named plaintiff be designated as representative of the
15 Class and that named counsel be designated Class Counsel.

16 2. Provide Class members with emergency notice;

17 3. Monetary damages, including but not limited to, a full
18 refund of all costs associated with the purchase of and/or payment
19 for recalled Aqua Dots;

20 4. Compensatory damages;

21 5. Punitive damages;

22 6. Attorneys' fees, expenses and costs of this action; and

23 7. Such other and further relief as may be just and proper.

24 JURY TRIAL DEMAND

25 Plaintiff demands trial by jury on all issues so triable.

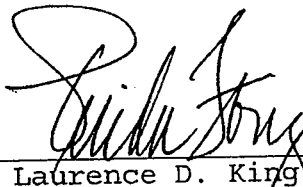
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1 DATED: November 16, 2007

KAPLAN FOX & KILSHEIMER LLP

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Laurence D. King (SBN 206423)

lking@kaplanfox.com

Linda M. Fong (SBN 124232)

lfong@kaplanfox.com

KAPLAN FOX & KILSHEIMER LLP

350 Sansome Street, Suite 400

San Francisco, CA 94104

Telephone: 415-772-4700

Facsimile: 415-772-4707

Lori S. Brody

lbrody@kaplanfox.com

KAPLAN FOX & KILSHEIMER LLP

1801 Century Park East, Suite 1460

Los Angeles, CA 90067

Telephone: 310-785-0800

Facsimile: 310-785-0897

Frederic S. Fox

ffox@kaplanfox.com

Donald R. Hall

dhall@kaplanfox.com

KAPLAN FOX & KILSHEIMER LLP

850 Third Avenue, 14th Floor

New York, NY 10022

Telephone: 212-687-1980

Facsimile: 212-687-7714

Elizabeth A. Fegan

beth@hbsslaw.com

HAGENS BERMAN SOBOL SHAPIRO LLP

820 North Blvd, Suite B

Oak Park, IL 60301

Telephone: 708-776-5600

Facsimile: 708-776-5601

Steve W. Berman

HAGENS BERMAN SOBOL SHAPIRO LLP

1301 Fifth Avenue, Suite 2900

Seattle, Washington 98101

Telephone: 206-623-7292

Facsimile: 206-623-0594

Attorneys for Plaintiff

Laurence D. King (SBN 206423)
KAPLAN FOX & KILSHEIMER LLP
350 Sansome Street, Suite 400
San Francisco, CA 94104
Tel: (415) 772-4700

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KIM A. COSGROVE, on behalf of herself and all
~~THOSE~~ similarly situated,
PLAINTIFF(S)

v.

SPIN MASTER, LTD., SPIN MASTER, INC. and
MOOSE ENTERPRISES
DEFENDANT(S)

CASE NUMBER

CV07-0754 AMM PLA_x

FOR OFFICE USE ONLY SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney
LAURENCE D. KING, whose address is:

KAPLAN FOX & KILSHEIMER LLP
350 Sansome Street, Suite 400
San Francisco, CA 94104

an answer to the ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim
which is herewith served upon you within 20 days after service of this Summons upon you, exclusive
of the day of service. If you fail to do so, judgement by default will be taken against you for the relief
demanded in the complaint.

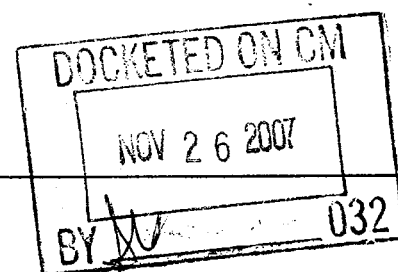
FOR OFFICE USE ONLY

Clerk, U.S. District Court

Dated: NOV 16 2007

By: KENDRA BRADSHAW
Deputy Clerk

(Seal of the Court)



**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Margaret M. Morrow and the assigned discovery Magistrate Judge is Paul L. Abrams.

The case number on all documents filed with the Court should read as follows:

CV07- 7544 MMM (PLAx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> KIM A. COSGROVE, on behalf of herself and all others similarly situated	DEFENDANTS SPIN MASTER, LTD., SPIN MASTER, INC. and MOOSE ENTERPRISES
(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases): Nassau County, NY	County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):
(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Laurence D. King Kaplan Fox & Kilsheimer LLP 350 Sansome Street, Suite 400 San Francisco, CA 94104 Tel: (415) 772-4700	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td></td> <td align="center"><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input checked="" type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State		<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input checked="" type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify):	<input type="checkbox"/> 6 Multi-District Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
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V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No **MONEY DEMANDED IN COMPLAINT:** \$ _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 complaint alleges claims for strict products liability, negligence, breach of express and implied warranty, violations of Cal. Bus. & Prof. Code §17200, §17500 and Cal. Consumers Legal Remedies Act, Civil Code §1750 related to design, development, manufacture, sale and marketing of defective toys

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities /Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input checked="" type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) (405(g)) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

FOR OFFICE USE ONLY: Case Number: _____

CV07-07544

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

- ☐ Check here if the U.S. government, its agencies or employees is a named plaintiff.
 New York - Cosgrove

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

- ☐ Check here if the U.S. government, its agencies or employees is a named defendant.
 New York - Spin Master Ltd.
 Los Angeles County - Spin Master, Inc.
 New York - Moose Enterprises

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)

- Note: In land condemnation cases, use the location of the tract of land involved.
 Los Angeles County

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____

Date

11/16/07

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))